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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1941

No. 1198

316US #17
MAS-MIL

J. R. MASON,
Petitioner,

vs.

ANDERSON-COTTONWOOD IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable Harlan F. Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioner J. R. Mason prays that a writ of certiorari issue to review the decision (R. 246) of the Circuit Court of Appeals for the Ninth Circuit made in the above entitled cause on March 21, 1942, which affirmed the final decree of the District Court of the Northern District of California, Northern Division,

rendered against petitioner and others on July 7, 1941 and filed July 9, 1941. (R. 204, 210, 211.)

OPINION BELOW.

Opinion of the Circuit Court of Appeals, ... Fed. (2d) ..... (R. 246.)

JURISDICTION.

The decision of the Circuit Court of Appeals was rendered March 21, 1942. (R. 246.) The mandate was stayed until disposition of the case by this court. (R. 254.) The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code. (28 U. S. C. Sec. 347 (a).)

STATUTES INVOLVED.

Municipal Bankruptcy Act of May 24, 1934, c. 345 (48 Stat. 798), 11 U. S. C. 301-303, adding Sections 78-80 to the Bankruptcy Act of 1898; Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U. S. C. 401-404, adding Sections 81-84; and Act of June 22, 1938, c. 575, Sec. 3 (b). (52 Stat. 940.) Principal California statutes involved are "the California Irrigation District Act", Cal. Stat. 1897, p. 254, as amended; the "California Districts Securities Commission Act", Cal. Stat. 1931, p. 2263, as amended.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a proceeding brought by the respondent Anderson-Cottonwood Irrigation District, a California irrigation district, for composition of debts under Chapter IX of the Bankruptcy Act of 1898 as amended. (11 U. S. C. Secs. 401-404.)

The Anderson-Cottonwood Irrigation District, herein referred to as the district, is an instrumentality and arm of the State of California, exercising exclusively governmental functions. It was formed July 14, 1914 under Cal. Stat. 1897, p. 254 as amended, and contains 32,000 acres of land located in Shasta and Tehama Counties, California. (R. 48.)

On January 1, 1916, the district issued its general obligation bonds in the amount of $480,000, due serially from 1937 to 1956, and on July 1, 1917 the second bond issue in the amount of $575,000 due serially from 1938 to 1957 was sold. On July 1, 1920, bond issue number three in the amount of $200,000 due serially from 1925 to 1935 was sold. All issues bear interest coupons at six per cent per annum, payable semi-annually, and no bonds are due or redeemable prior to maturity.

These facts are not disclosed by the record. The petition in bankruptcy (R. 1) does not even state the amount of indebtedness, except inferentially by attaching an exhibit from which it appears that the indebtedness consisted of bonds in the amount of $1,255,000. (R. 7.)

The plan of composition is set forth (R. 36) and alleges that the appellee secured a loan of $339,000

from the Reconstruction Finance Corporation to enable it to compose its indebtedness of $1,211,000 principal plus interest from 1931. (R. 8.)

The cause was first heard as a contested issue before the court and a plan of composition was approved by an interlocutory decree confirming the same on January 15, 1940. (R. 46-60.) Thereafter, appeals were taken to the Ninth Circuit Court of Appeals by petitioner and others, which appeals were dismissed by that court pursuant to a stipulation entered into which provided for such dismissal in the event a writ of certiorari should be denied in the cause of West Coast Life, etc. v. Merced Irrigation District, No. 9242 in that court. (R. 201, 202.) The mandate of the United States Supreme Court denying certiorari in the West Coast Life case was issued January 6, 1941 (R. 203) 311 U. S. 718.

Thereafter, the final decree was entered and filed July 9, 1941 (R. 204) from which this appeal is taken. By this final decree the court found that the plan of composition was fair, equitable and just. The report of the disbursing agent was approved and the decree further provided that all original bonds and all other obligations of appellee affected by the plan of composition, whether surrendered or cancelled or remaining outstanding and by whomsoever held were thereby cancelled, annulled and held for naught, as enforceable obligations, except as provided in the decree, and restraining forever the holders thereof from asserting any claim or demand against the appellee, its officers or property, and further adjudging that all such obli-

gations not presented to the registrar of the court within twelve months should thereafter be forever barred from participating in the plan of composition or the funds held in the registry of the court, and providing that all such obligations of the district affected by the plan of composition are cancelled, annulled and held for naught except as provided in the decree and that the holders are forever restrained from asserting any claim as against the district or its officers or any property situated therein or the owners thereof. (R. 204, 210.)

By proper specification of error and presentation of points on appeal the petitioner sought a reversal of the final decree, principally on the grounds that: 1. The interlocutory decree was permissive only and neither released nor discharged the respondent from its trust duties nor interfered with its borrowing and taxation powers, while the final decree does squarely impinge on the sovereign powers of the State confided to respondent. 2. That the court had exceeded its jurisdiction and statutory authority by placing a limit of 12 months within which bondholders could present their obligations and receive anything pursuant to the plan of composition. 3. That the court exceeded its jurisdiction in that it issued any restraining order of any character whatsoever against the creditors of the debtor. 4. That the decree is totally unsupported by findings or adjudication warranting and determining that the plan of composition was fair and equitable. (R. 223, 224, 225, 236.)

QUESTIONS PRESENTED.

1. When a sovereign state in the lawful exercise of its borrowing power has contracted the economic rent (usufruct) of certain lands under its exclusive jurisdiction, and dedicated them and their usufruct irrevocably and without time limit, or as much of said usufruct as may need to be collected under the taxing power to repay money borrowed, and the State Supreme Court has decided that such dedication constitutes a "public trust" for the "uses and purposes of the act" (one of the purposes of which trust is to fulfill contracts), and whether such borrowing power is exercised by the state directly or through a political subdivision or instrumentality of the state to whom the state has irrevocably confided its inexhaustible power of taxation, does the amended 11 U. S. C. A. 401-404, notwithstanding the explicit prohibition against any "interference" with "political and governmental powers of the petitioner", appearing in subsection (a) of Sec. 403 (c), grant jurisdiction to the federal court to discharge and release respondent here from the duty of annually levying and collecting direct taxes as required under the law of its creator, the State of California?

2. Does a decree which discharges the public debtor in bankruptcy violate the right reserved by the people over the taxing power and violate Art. 13, Sec. 6, Constitution of California, which provides that the power of the state over taxation shall never be surrendered or suspended by a grant of power to which the state shall be a party?

3. May the final decree in a municipal bankruptcy case embody an injunction?

4. Is a final decree erroneous which adjudges the bankruptcy plan fair and equitable when neither the findings of fact, conclusions of law nor interlocutory decree state facts from which the conclusion that the plan is fair and equitable can be drawn?

REASONS FOR GRANTING THE WRIT.

1. We submit this court should determine the question whether a public trust, expressing a fundamental public policy of the State of California, namely, the collection of economic rent, through taxation (California irrigation districts' taxation is upon the basis of the value of land only, excluding improvements, even trees and alfalfa) and the dedication thereof to the repayment of borrowed money can be the object of jurisdiction and control by the bankruptcy court.

2. The Bekins decision, *U. S. v. Bekins,* 304 U. S. 27, does not determine that Chapter IX of the Bankruptcy Act (11 U. S. C. 401-404) is so drafted that it may be operated or applied so as not to interfere with the political or governmental powers of petitioner. The Ashton decision, *Ashton v. Cameron County Water Improvement Dist. No. 1,* 298 U. S. 513, held that the former Chapter IX did impinge on the sovereignty of the state and was therefore unconstitutional. The Bekins decision arose out of a motion to dismiss the petition on the ground that the act was unconstitutional. No case involving an actual controversy under a

final decree has heretofore come to the Supreme Court of the United States. The interlocutory decree in this case is permissive only as to respondent, but the final decree purports to discharge respondent from its debts, to enjoin the creditors from pursuing any claim, and in effect permanently releases the governmental agency from its contractual obligation to levy taxes, other than necessary, pursuant to the contracts surviving the plan of composition. Instead of deciding the question raised the court said "This can hardly be thought interference violative of the act * * *" We submit this court should determine whether such "interference" is constitutional.

3. This court should determine, we submit, whether the courts can by final decree in municipal bankruptcy cases limit the time within which claims may be presented after the entry of the final decree and enjoin bondholders from retaining rights guaranteed under state law and thus effectively retain jurisdiction of the case, despite the absence of provision in the Bankruptcy Act conveying such authority.

4. This court has never, we submit, passed upon the question in a municipal bankruptcy case as to whether the words "fair and equitable" are words of art as is held to be the case in private bankruptcy or whether they are ultimate facts found by the court, and whether a finding that the plan is fair and equitable is sufficient to sustain a decree so adjudicating. It is respectfully represented that the purpose of requiring special findings is to enable the Appellate Court to pass upon the conclusions of law and decree

as a legal matter based upon the findings made without the necessity of examining the entire record, and that a rule as to such matters ought to be laid down. The same lower court has in another case subsequently held that an interlocutory decree with like findings as in this case is not supported by the findings and has remanded the case to the District Court for further proceedings and correction of the findings. (See opinion of C. C. A. 9, April 16, 1942 in *Lorber v. Vista Irrigation District,* No. 9873, ... Fed. (2d) .....)

Wherefore, petitioner prays that a writ of certiorari be issued out of and under the seal of this honorable court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and to send to this court for its review and determination a full and complete transcript of the record and of the proceedings of said court in the case numbered and entitled in its dockets as "No. 9951 J. R. Mason, Appellant, v. Anderson-Cottonwood Irrigation District, Appellee", and that the decree of said court be reversed by this court with directions to dismiss the bill, and for such other relief as to this court may seem proper.

Dated, San Francisco, California,
April 24, 1942.

J. R. MASON,
Petitioner.

PETER TUM SUDEN,
GEORGE THOMAS DAVIS,
Counsel for Petitioner.